



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2005

Ms. Maureen E. Ray  
Special Assistant Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711

OR2005-03792

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223211.

The State Bar of Texas (the "state bar") received a request for information pertaining to the investigation that resulted from the requestor's complaint. You contend that the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>1</sup>

We first consider your argument that the submitted information is not subject to the Act. Section 81.033(a) of the Government Code provides that:

[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552 [of the Government Code].

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<sup>1</sup> We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 81.033(a). You also assert that the information at issue is confidential and privileged under rule 2.16 of the Texas Rules of Disciplinary Procedure.<sup>2</sup> Rule 2.16 pertains to proceedings of grievance committees within the state bar's disciplinary districts and provides that "Disciplinary Proceedings are strictly confidential and not subject to disclosure, except by court order or as otherwise provided in this Rule 2.16." TEX. R. DISCIPLINARY P. 2.16, reprinted in Gov't Code tit. 2, subtit. G, App. A-1. Thus, you argue that pursuant to section 81.033(a), the submitted information is not subject to the Act. You inform us that the submitted information pertains to a grievance investigation and disciplinary proceeding against an attorney that was ultimately dismissed. Based on your representations and our review, we agree that the submitted information is confidential under rule 2.16A. We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the submitted information is not subject to the Act and need not be released to the requestor.<sup>3</sup>

You ask this office to issue a previous determination that would authorize the state bar to withhold information that relates to disciplinary proceedings. Because we find that the requested information is not subject to the Act, a previous determination is not appropriate in this case. *See* Gov't Code § 552.301(a) (a previous determination is a determination that one of the Act's exceptions to disclosure applies to the information at issue). Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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<sup>2</sup> We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex. App.—Houston [1st Dist.] 1982, writ ref'd n.r.e.).

<sup>3</sup> Because we dispose of this issue under section 81.033(a), we do not address your claims under the Act.

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 223211

Enc. Submitted documents

c: Ms. Mary Ann Castro  
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San Antonio, Texas 78248  
(w/o enclosures)